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10/722,380	11/25/2003	August Karl Meyer	038675/270589	4624

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ART UNIT PAPER NUMBER

1774

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/722,380
Filing Date: November 25, 2003
Appellant(s): MEYER ET AL.

Meyer et al
For Appellant

EXAMINER'S ANSWER

MAILED
MAR 24 2006
GROUP 1700

This is in response to the appeal brief filed 2/28/06 appealing from the Office action
mailed 7/27/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 31-34, 11-13, 21-24, 26, 27, 30, and 39-44.

Claims 8, 9, 14-20 and 24 are withdrawn from consideration as not directed to the elected to the nonelected invention.

Claims 1-7, 10, 21, 25, 28-29, and 35-38 have been canceled.

Regarding Appellant first time comments about claim 14, according to the restriction dated 10 /13/04 claim 14 was apart of group I, however appellant elected group II for examination which does not include claim 14. The principle of constant in the restriction is well established and the issue is moot.

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(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on 11/28/05 has not been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is deficient. 37 CFR 41.37(c)(1)(v) requires the summary of claimed subject matter to include: (1) a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number, and to the drawing, if any, by reference characters and (2) for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters. The brief is deficient because of the forgoing and because it is a piecemeal of the specification. A correct Summary of the Invention is found on page 2 of the specification.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,162,539	Shimizu	12-2000
6,855,422	Magill	10-2000

Fairchild's Dictionary of Textiles, 7 th Edition, April 1996,pages 53, 373, and 510.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31-34, 11-13, 21-23, 26-27, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimizu (US 6,162,539) in combination with Magill (US 6,855,422).

Shimizu teaches a sheath core bicomponent fiber comprising a core having a polymer and about 5-60% by weight of a luminous pigment (a phosphorescent pigment such as meat aluminate oxide of claim 1). Shimizu further teaches the sheath includes a polymer and no luminous pigment. Shimizu still further teaches on one hand, the core to sheath ratio (cross sectional area) is in the range of 1:3. See col. 9 line 1-3, claim 1, and col. 3 line 1. Shimizu yet still further teaches the core and sheath can be the same or different polymer at col 4 lines 39. Shimizu also further teaches the polymer can be polyolefin, polypropylene, nylon 6, nylon 66, and PET. See col. 1 and col. 4 line 29. Shimizu teaches all the claim invention except the core component cross-section area and a fabric. Magill teaches it is well known in the art of multi-component fibers having luminescent colorant to make them into fabrics (embraces woven, non-woven, and knitted fabrics) and vary and control the cross sectional area on the core or sheath from

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10% to 90 % in order to provide phase change ability to the fiber, See claims 1-9 of Magill. Thus it would have been obvious to one having ordinary skill in the art to combine the teachings of Magill with the fiber taught by Shimizu, in order to provide a fabric having phase change ability to the fiber.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 31,39,40,41,42,43,44,11,12,13,26,27, and 30 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Magill (US 6,855,422).

Magill teaches a fabric (which embraces woven, knitted, and non-woven) made from multi-component sheath core fiber of polyamide of Polyamide nylon6, for example. Magill further teaches the core and sheath can contain a luminescent pigment (colorant or fluorescent whitening agents) in the core and sheath. See col. 4, col.6, and column 7 lines 40-43. Magill still further teaches the sheath core can be multi-lobal and having a cross sectional of 10% to 90 % by weight. See claim 4 for example, Magill also teaches the fiber (embraces staple or continuous fibers) can be melt spun at col. 1 line 42.

(10) Response to Argument

Appellant argues that 1) Shimizu teaches of a core sheath ratio of 1: 1 to 1: 3 (see col.9 lines 1-5) teaches away from the claim 31 "less than about 20".

It is clear that the appellant thinks the reference teach way, but the appellant has failed to state what reference teaches and why it teaches away from claim 31. Simply put, Shimizu teaching of a core sheath ratio of 1:3 means the core can be any thing percentage such as 20 % but the sheath must be 3 times the core, or 80% sheath which adds up to 100%. Thus Shimizu provides a reasonable expectation of success of providing the claimed fiber in combination with Magill.

Appellant argues that 2) Magill is not directed to a core sheath fiber intended to be highly luminous.

Contrary the above assertion Magill does teach a multi-component sheath and sheath core fibers see fig 1, fig 2, and claim 6, for example. The issue of highly luminous is not claimed and deemed moot.

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Appellant argues that 3) Shimizu is directed to a sheath core fiber while Magill is directed to a multi-component fiber thus the two reference are not even directed to the same types of fiber and they do not solve the same problems in the art.

The patent law is clear for analogous prior under 35 USC 103, in order to rely on a reference as a basis for a rejection of applicant's invention, the reference must either be in the field of applicant endeavor or, if not, then be reasonably pertinent to the particular problem. In re Oetiker, 24 USPQ2d 1443. In re Deminski, 230 USPQ 313. In re Clay, 23 USPQ2d 1058. Reading appellant claim 31 light of the specification at page 3 paragraph 12 reveals that appellant knows that a teaching of a multicomponent fiber include a sheath core and bicomponent fiber. Furthermore, Fairchild's textile dictionary show that one having ordinary skill in the art knows that a multi-component fiber includes a bicomponent fiber which includes a sheath core fiber. See page 373, 53, and 510 of Fairchild. Thus, it is clear that Shimizu teaching of a sheath core fiber is analogous art to Magill teaching of a multicomponent fiber and sheath core fibers (see fig 1, fig 2, and claim 6, for example). Hence the issue of whether the references solve the same problem is moot in-view of the law.

Appellant argue that 4) Magill teaches a fluorescent whiting agent and provides no examples of a fiber containing luminescent colorant.

First of all, the 103 rejection does not rely on the Magill's fluorescent whiting agents or colorant, which is generic to luminescent colorants and non-luminescent colorants. See

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claim 9 of Magill, for example. Secondly luminescent colorant is not claimed, see claim 31. Hence, to cite MPEP 2141.02 does not remedy the fact that Shimizu does not teach away from the invention. See response to argument 1.

Appellant argues that 5) the word luminance or luminescent does not appear in Magill reference.

Once again Magill teaches multi- component sheath core fiber having colorant, which is generic and includes luminance colorant and non-luminescent colorant, and fluorescent whitening agents (see claim 16 and 9, for example) meet claim 31 as stated in the 102 rejection above.

Appellant argues that 6) Magill teaches the core sheath can be varied that disclosure has no meaningful relevance to the claimed invention.

Really, Magill according to col.9 lines 50-14 the core sheath fiber may comprise virtually any percentages by weight of the core member and the sheath member. Also at col.23 lines 20-31 of Magill teaches the core sheath ratio of 10-90 %. This clearly meets claim 31 core comprises less than about 20%. This appears to be meaningful to the claimed invention. Appellant recitation of MPEP 2131.02 and MPEP 2131.03 does nothing against the facts of the case, that Magill anticipates that claimed invention for reasons of record. Moreover, Appellant reference to example 1 and example 2 do nothing to help his claimed invention because example 1 uses 30 % luminescent colorant on the core and example 2 uses 6% colorant in the core while claim 31 recites less than about 20 %. Reading claim 31 in light of the spec at page 13 paragraph 53 reveals the invention

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comprised less than about 50 % colorant and claim 31 new range did not become important until Shimizu and Magill became references against the claimed invention.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


N. Edwards

Primary Examiner

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